IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA.

FIRST APPEAL NO. 308 OF 2002

1. State of Goa,
   Represented by Dy. Collector & S.D.O.,
   Ponda Sub-Division,
   Ponda-Goa.

2. Executive Engineer,
   Works Division XV (NH),
   Public Works Department,
   Ponda-Goa. .... Appellants

Versus

Shri Devendra Rajaram Sinai Kelekar,
R/o. Priol, Mardol,
Ponda-Goa. .... Respondent

Shri Guru Shirodkar, Additional Government Advocate for the Appellants.

Shri R.G. Ramani, Advocate for the Respondent.

CORAM : **P.V. KAKADE, J.**

Date of reserving the judgment :
24/08/2006

Date of pronouncing the judgment :
13/10/2006

JUDGMENT :

The appellant State has preferred this appeal against the award passed by the Additional District Judge, Panaji partly allowing the reference of the claimant under Section 18 of the Land Acquisition Act.

2. The claimant filed reference under Section 18 of the Land Acquisition Act for enhancement made by the Dy Collector and SDO Ponda on the application of the applicant. By notification under Section 4 of the Land Acquisition Act dated 16/08/1991, the claimant's land came to be acquired for the purpose of realignment of Mardol bye-pass on national highway 4A. The Land Acquisition Officer by his award dated 20/12/1994 fixed the compensation for the acquired land at the rate of Rs. 25/- and Rs. 30/- per sq. metre respectively for the areas of 2100 sq. metres from Survey No. 309/5 and 4950 sq. metres from Survey No. 311/6. Being dissatisfied by the said award, the reference came to be filed submitting that the market price of the impugned land was Rs. 250/- per sq. metre. The learned District Judge after hearing both the parties finally came to the conclusion that the claimant was entitled for partial enhancement in the compensation and fixed the market price at the rate of Rs. 60/- per sq. metre for Survey No. 309/5 and Rs. 79.68 per sq. metre for Survey No. 311/6.

3. I heard the learned Counsel for the State as well as the claimant/respondent. It was urged on behalf of the State that the learned District Judge has not properly appreciated the evidence on record. In fact there was no evidence on record to determine the market price on the basis

of similarity of any other sale instance in the vicinity. It was also urged that the learned trial Judge took into account the escalation of the price of the compared land at the rate of 10 p.p.a. which should not have been granted. Further, it was submitted that the market price fixed by the SLA was proper and rule of average should not have been adopted by the lower Court while adjudicating the fair market price of the impugned land. On the other hand, it was submitted on behalf of the respondent that the method adopted by the trial Judge could not be said to be illegal especially, when the sale instance is of the year 1986, related to the land adjacent to the acquired land which was available for comparison and, therefore, taking into account such evidence cannot be said to be improper. It was further submitted that the lower Court's deduction of one third price towards development charges appears to be correct and has to be accepted in law.

4. Perusal of the evidence on record shows that the acquired land is a part of the Survey No. 309/5 and 311/6 which were the properties acquired for the purpose of laying of the bye-pass on national highway no. 4A from Mangueshi to Veling by notification under Section 4 of the Land Acquisition Act in the year 1991 and Award came to be passed in the year 1994. It is further revealed that the acquired lands are bifurcated by the

Akhar road which goes from Mardol to Akhar Village and that local market at Mardol is at a distance of 100 metres. Similarly, facilities of bank, post-office, playground and school are available at Mardol within 100 metres of the acquired land. The Mahalsa Temple visited by large number of devotees is at a distance of about 250 metres from the acquired land. The evidence further reveals that water from the pipeline and electricity supply were available at a distance of 5 metres, while there was construction in the vicinity at a distance of 7 to 8 metres where one Magan Mardolkar had constructed a building after purchasing the plot and there was another house of one Prakash hardly 15 metres away. The claimant further revealed that said Mardolkar had purchased the land having an area of 305 sq. metres at the rate of Rs. 90/- per sq. metre which is at a distance of only 6 metres from the acquired land in which a building of ground plus three storey had been constructed and flats were sold on ownership basis. The said sale instance is produced at Exhibit 'X' and later on included in the evidence after examination of Mardolkar himself. The claimant also relied upon the sale instance of one Prakash who purchased the plot of 300 sq. metres in the year 1992 at the rate of Rs. 40/- per sq. metre for constructing a house. However, this sale instance of the year 1992 may not be taken into consideration as it was after the date of notification under Section 4 of the

Land Acquisition Act. The evidence on record further reveals that land was also valued through expert valuer who is examined as a witness. However, the learned District Judge discarded the evidence of the expert witness on the ground that he has prepared the report after his visit which was much subsequent to the date of notification. No doubt that under said circumstances the expert report loses its value. However, in my considered view, if the expert report alongwith the evidence of the expert is sufficient to throw light on the situation which existed on the date of Section 4 notification, then there should not be any hindrance in accepting that part of the report. In the present case before us, the report shows the existence of not only Village Mardol in the close vicinity, but also the ancient temple of Goddess Mahalsa is located nearby which is visited by large number of devotees. These aspects are evidently existing since prior to the date of notification under Section 4 of the said Act.

5. The claimant has also relied upon the award passed by District Judge in Land Acquisition Case No. 14 of 1993 which was decided on 12/02/1997, by which land in Priol Village had been acquired for improvement of national highway 4A and where the land was acquired under notification dated 18/09/1986. In that matter though the claimant

was for compensation at the rate of Rs. 90/- per sq. metre, the District Judge awarded the market rate at the rate of Rs. 65/- per sq. metre and that judgment admittedly attained finality. The learned Counsel for the State vehemently urged that the land acquired in the year 1986 can not be compared to the acquired land which was acquired in the year 1991. Further, it was submitted that the said land was located at the distance of about 1 km from Mardol market and, therefore, there cannot be any similarities for comparison between the two lands. In my considered view, no doubt that those could not be compared to great advantage however, we definitely get sufficient indicator about the market value of the land in the vicinity, particularly acquired for the purpose of expansion or diversion of national highway number 4A.

6. Evidently, the acquired land 311/6 is free of tenancy and the dispute between the claimant and his sister under Section 30 of the Land Acquisition Act is said to be settled amicably by a consent Award dated 19/2/1996 drawn by the District Court. The area of Survey No. 311/6 is 4950 sq. metres is freehold area to which applicant alone is entitled to compensation. The acquired area of Survey No. 309/5 is of 2100 sq. metres and admittedly there was dispute between the claimant and a tenant in the

said land. However, it was submitted on behalf of the respondent that the said dispute regarding tenancy had come to an end. While this aspect was referred the learned Additional Government Pleader wanted to file some documents on record in order to show that such dispute still exists. However, it is needless to mention that due procedure contemplated under Order 41 Rule 71 of the Civil Procedure Code is not followed for production of additional evidence. Such papers passed across the table cannot be gone into for obvious reason that the other party would not have any opportunity to explain the same.

7. Be as it may, even if such dispute arises, in that case provision of Section 30 of the Land Acquisition Act could be invoked and necessary orders would be passed.

8. Turning back to the adjacent land of Mardolkar it is seen that he purchased the land at the rate of Rs. 90/- per sq. metre vide Exhibit 27. No doubt that the acquired land portion of Survey No. 311/6 admeasures 4950 sq. metres which is large in comparison and undeveloped is at Exhibit 26. Therefore, the learned District Judge has rightly made deduction of one third price for the purpose of development and worked out the rate at Rs.

60/- per sq. metre which in my considered view appears to be just, legal and proper especially, when it is found that within 40 to 50 metres of the acquired land, facilities such as water, electricity, telephone are found to be existing, besides the fact that the Village Mardol is at the distance of about 100 metres where all such facilities indeed are available.

9. The learned District Judge, it appears, has taken into account the earlier judgment and award wherein the land acquired was of the year 1986 and has held it to be a baseline in order to calculate the price of 10% acceleration and in order to calculate the market value of the impugned land at the rate of Rs. 76.5 per sq. metre. The Government Pleader indeed raised objections to utilise such method for fixing the market value of the land in question especially, when the acquired land was under notification of Section 4 of the year 1991. In my considered view, when the earlier award had attained finality then the element of the market price of the year 1986 could become relevant and, therefore, it cannot be said that the District Judge has acted illegal for forming the baseline of the price in the year 1986. The reasoning and findings adopted in that regard appear to be reasonable and, therefore, it would brook no interference. Suffices to say therefore, I do not see any reason to disturb the findings recorded by the

District Court while coming to the conclusion regarding fair market price of the impugned lands. It may be noted that both the parties relied upon several rulings by this Court as well as Apex Court, however, perusal thereof shows that those are general principles laid down, about which there cannot be two opinions. However, in peculiar circumstances involved in this case, I do not see that any illegality has occurred in fixing the market rate of the impugned lands in this reference.

10. For the reasons recorded above, I hold that the appeal is devoid of any merits and, therefore, stands dismissed with no order as to costs.

P.V. KAKADE, J.

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